

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 271

Introduced by Senator Soto

February 18, 2003

~~An act to amend Sections 20585, 20588, and 20590 of the~~ *An act to amend Sections 20570, 20572, 20574, 20576, 20577, 20578, and 20581 of, and to add Section 20577.5 to, the Government Code, relating to public employees' retirement, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 271, as amended, Soto. Public employees' retirement: termination of contracts.

~~(1) Existing law authorizes the Board of Administration of the Public Employees' Retirement System to enter into an agreement with the governing body of a contracting agency and the governing body of a city or county or, in certain counties, the board of retirement, for termination of to terminate the contracting agency's participation in the Public Employees' Retirement System and inclusion of the agency's employees in the retirement system of the city or county. Existing law requires the agreement to contain provisions the board finds necessary to protect the interests of the system, as specified, if the contract has been in effect for at least 5 years, as specified, and the vote in favor thereof is made not less than one year after the notice of intention to terminate, effective upon approval by the Board of Administration of the Public Employees' Retirement System.~~

~~This bill would authorize the board to include other provisions in that agreement to address issues related to the transfer, as specified eliminate the requirements that the vote in favor of termination be made not less than one year after the notice of intention to terminate.~~

(2) Existing law authorizes the board to terminate contracts with contracting agencies that fail to pay any installment of contributions, as specified, into the Public Employees' Retirement Fund, a continuously appropriated fund.

This bill would provide that if a contracting agency fails to remit contributions when due, the agency may be assessed interest, costs of collection, and in the case of repeated delinquencies, certain penalties, as specified. Because those amounts would be deposited into the Public Employees' Retirement Fund, the bill would make an appropriation.

(3) Existing law provides that the board has a lien on the assets of a terminated contracting agency, as specified, and that all assets and liabilities of a terminated agency are pooled into a single account.

This bill would provide that a terminated agency shall be liable to the system for any deficit in funding for earned benefits, interest, and costs of collection, as specified.

The bill would also authorize the board to merge certain terminated plans into the terminated agency pool, as specified. The bill would make related changes with respect to assets and liabilities of terminated agencies, and with respect to payments owed to the system upon termination.

The bill would further provide that if a contracting agency has not paid the system for any deficit in funding for earned benefits, members shall be entitled to the benefits to which members of the plan were entitled 36 months prior to the date the agency notified the board of its intention to terminate its contract or 36 months prior to the date the board notified the agency of its intent to terminate the contract, whichever is earlier.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 20585 of the Government Code is~~
- 2 *SECTION 1. Section 20570 of the Government Code is*
- 3 *amended to read:*
- 4 20570. (a) If the contract has been in effect for at least five
- 5 years and was approved by an ordinance or resolution adopted by
- 6 the governing body of the contracting agency, the governing body
- 7 may terminate it by the adoption of a resolution giving notice of
- 8 intention to terminate, and by the adoption, ~~not less than one year~~

1 ~~thereafter~~ by the affirmative vote of two-thirds of the members of
2 the governing body, of an ordinance or resolution terminating the
3 contract. Termination shall be effective with board approval on the
4 date designated in the ordinance or resolution terminating the
5 contract.

6 (b) If the contract is a joint contract and the joint contract has
7 been in effect for at least five years, the contract may be terminated
8 by the adoption of trial court and county resolutions giving notice
9 of intention to terminate, and by the adoption, ~~not less than one~~
10 ~~year thereafter~~ by the affirmative vote of two-thirds of the
11 members of the governing body of the county, and by the presiding
12 officer of the trial court, of an ordinance or resolution terminating
13 the contract. Termination shall be effective with board approval on
14 the date designated in the ordinance terminating the contract.

15 SEC. 2. Section 20572 of the Government Code is amended to
16 read:

17 20572. (a) If a contracting agency fails for 30 days after
18 demand by the board to pay any installment of contributions
19 required by its contract, or fails for three months after demand by
20 the board therefor to file any information required in the
21 administration of this system with respect to that agency's
22 employees, or if the board determines that the agency is no longer
23 in existence, the board may terminate that contract by resolution
24 adopted by a majority vote of its members effective 60 days after
25 notice of its adoption has been mailed by registered mail to the
26 governing body of the contracting agency.

27 (b) *If a contracting agency fails to remit the contributions when*
28 *due, the agency may be assessed interest at an annual rate of 10*
29 *percent and the costs of collection, including reasonable legal fees,*
30 *when necessary to collect the amounts due. In the case of repeated*
31 *delinquencies, the contracting agency may be assessed a penalty*
32 *of 10 percent of the delinquent amount. That penalty may be*
33 *assessed once during each 30-day period that the amount remains*
34 *unpaid.*

35 SEC. 3. Section 20574 of the Government Code is amended to
36 read:

37 20574. *A terminated agency shall be liable to the system for*
38 *any deficit in funding for earned benefits, as determined pursuant*
39 *to Section 20577, interest at the actuarial rate from the date of*
40 *termination to the date the agency pays the system, and for*

1 *reasonable and necessary costs of collection, including attorney's*
2 *fees.* The board shall have a lien on the assets of a terminated
3 contracting agency, subject only to a prior lien for wages, in an
4 amount equal to the actuarially determined deficit in funding for
5 earned benefits of the employee members of the agency, *interest,*
6 *and collection costs.* The assets shall also be available to pay actual
7 costs, including attorney fees, necessarily expended for collection
8 of ~~such~~ the lien.

9 *SEC. 4. Section 20576 of the Government Code is amended to*
10 *read:*

11 20576. (a) Upon the termination of a contract, the board shall
12 hold for the benefit of the members of this system who are credited
13 with service rendered as employees of the contracting agency and
14 for the benefit of beneficiaries of this system who are entitled to
15 receive benefits on account of that service, the portion of the
16 accumulated contributions then held by this system and credited
17 to or as having been made by the agency that does not exceed the
18 difference between (1) an amount actuarially equivalent,
19 including contingencies for mortality fluctuations, as determined
20 by the actuary and approved by the board, the amount this system
21 is obligated to pay after the effective date of termination to or on
22 account of persons who are or have been employed by, and on
23 account of service rendered by them to, the agency, and (2) the
24 contributions, with credited interest thereon, then held by this
25 system as having been made by those persons as employees of the
26 agency.

27 (b) *All plan assets and liabilities of agencies whose contracts*
28 *have been terminated shall be merged into a single pooled account*
29 *to provide exclusively for the payment of benefits to members of*
30 *these plans. Recoveries from terminated agencies for any deficit in*
31 *funding for earned benefits for members of plans of terminated*
32 *agencies, and interest thereon, shall also be deposited to the credit*
33 *of the terminated agency pool.*

34 *SEC. 5. Section 20577 of the Government Code is amended to*
35 *read:*

36 20577. If, at the date of termination, the sum of the
37 accumulated contributions credited to, or held as having been
38 made by, the contracting agency and the accumulated
39 contributions credited to or held as having been made by persons
40 who are or have been employed by the agency, as employees of the

1 agency, is less than the actuarial equivalent specified in clause (1)
2 of Section 20576, the agency shall contribute to this system under
3 terms fixed by the board, an amount equal to the difference
4 between the amount specified in clause (1) of Section 20576 and
5 the accumulated contributions. The amount of the difference shall
6 be subject to interest at the actuarial rate from the date of contract
7 termination to the date the agency pays this system. If the agency
8 fails to pay to the board the amount of the difference, all benefits
9 under the contract, payable after the board declares the agency in
10 default therefor, shall be reduced by the percentage that the sum
11 is less than the amount in clause (1) of, Section 20576 as of the date
12 the board declared the default. If the sum of the accumulated
13 contributions is greater than the amount in clause (1) of Section
14 20576, an amount equal to the excess ~~multiplied by the ratio of the~~
15 ~~market-to-book value of all investments~~ shall be paid by this
16 system to the contracting agency, including interest at the actuarial
17 rate from the date of contract termination to the date this system
18 makes payment. The market ~~and book values~~ value used shall be
19 the ~~values~~ value calculated in the most recent annual closing.

20 The right of an employee of a contracting agency, or his or her
21 beneficiary, to a benefit under this system, whether before or after
22 retirement or death, is subject to the reduction.

23 *SEC. 6. Section 20577.5 is added to the Government Code, to*
24 *read:*

25 *20577.5. Notwithstanding Section 20577, the board may*
26 *merge a plan that has been terminated pursuant to Section 20572*
27 *into the terminated agency pool without benefit reduction, or with*
28 *a lesser reduction, if (a) the board has made all reasonable efforts*
29 *to collect the amount necessary to fully fund the liabilities of the*
30 *plan, and (b) the board finds that the merger of the plan into the*
31 *terminated agency pool without benefit reduction will not impact*
32 *the actuarial soundness of the terminated agency pool.*

33 *SEC. 7. Section 20578 of the Government Code is amended to*
34 *read:*

35 ~~20578. Notwithstanding any other provision of law~~
36 *(a) Except as provided in subdivision (b), on and after January 1,*
37 *1991, the rights and benefits of a former employee of a contracting*
38 *agency which terminated on or before January 1, 1991, or of his*
39 *or her beneficiary, shall be the same as if the agency had continued*
40 *as a contracting agency. Any monthly allowance of that individual,*

1 or of his or her beneficiary, that was reduced pursuant to Section
2 20577 because the contracting agency failed to pay the board the
3 amount of the difference, shall not be subject to continued
4 reduction on or after January 1, 1991. As of January 1, 1991,
5 benefits shall be paid at the level provided in the contract prior to
6 that reduction. However, if a former employee of a contracting
7 agency that terminated on or before January 1, 1991, becomes
8 employed by another covered employer after the date of
9 termination, including an employer subject to reciprocity, the
10 benefits shall be calculated by using the highest compensation
11 earned by the individual.

12 In accordance with Section 20580, an individual who has
13 withdrawn his or her accumulated contributions from the
14 terminated agency shall not be permitted to redeposit any
15 withdrawn contributions upon again becoming a member of this
16 system.

17 ~~All assets and liabilities of contracting agencies which have~~
18 ~~terminated shall be pooled into a single account to provide~~
19 ~~exclusively for the payment of benefits. All~~ *Except as provided in*
20 *Section 20577.5*, benefits shall be reduced proportionally pursuant
21 to Section 20577 prior to the transfer of assets to the pool if the
22 amount of the terminating agency's assets are less than the
23 actuarial equivalent described in clause (1) of Section 20576 and
24 if the agency fails to pay the difference.

25 *(b) If a contracting agency has not paid the system for any*
26 *deficit in funding for earned benefits, as determined pursuant to*
27 *Section 20577, members shall be entitled to the benefits to which*
28 *members of the plan were entitled 36 months prior to the date the*
29 *agency notified the board of its intention to terminate its contract*
30 *or 36 months prior to the date the board notified the agency of its*
31 *intent to terminate the contract, whichever is earlier.*

32 SEC. 8. *Section 20581 of the Government Code is amended to*
33 *read:*

34 20581. If a public agency that terminated its contract enters
35 into a contract for participation in this system, the contract may
36 provide for increase in benefits of persons retired or members who
37 retained rights under this system, if the benefits were reduced
38 under this article at the time of termination, to the level provided
39 in the contract for members, and for redeposit of any contributions
40 for service to the agency not credited under a local system



maintained by the agency after termination, withdrawn at termination by a person who becomes a member on contract date. Unless the redeposit is made, the member shall not receive credit for the service. All service rendered prior to contract date and credited as a result of the contract shall constitute prior service whether or not rendered during the period of the terminated contract, and all assets and liabilities existing with respect to the previous contract shall become assets and liabilities with respect to the new contract. All liabilities for service performed under the terminated contract shall become liabilities of a plan under the new contract. The ratio of assets to liabilities that existed at the time the previous contract was terminated shall be used to calculate the amount of assets to be transferred to a plan under the new contract.

amended to read:

20585. (a) Notwithstanding any other provision of this article, the board may enter into an agreement with the governing body of a contracting agency whose contract has been in effect for at least five years and the board of supervisors of a county maintaining a county retirement system for termination of the contracting agency's participation in this system and inclusion of its employees in the county retirement system.

(b) The agreement shall contain provisions the board finds necessary to protect the interests of this system, including provisions for determination of the amount, time, and manner of transfer of cash or securities, or both, to be transferred to the county system representing the value of the interests in the retirement fund of the contracting agency and its employees by reason of accumulated contributions credited to the agency and its employees. However, the amount transferred may not exceed the amount of the accumulated contributions. Any amount representing the difference between the value of the interests in the retirement fund of the contracting agency and its employees, and the accumulated contributions credited to the agency and its employees, shall be credited to the reserve under Section 20174. The agreement may also contain any other provisions that the board deems necessary to address issues related to the transfer, including, but not limited to, service credited under employers other than the contracting agency, benefits subject to a domestic relations order, and benefits subject to a lien.

~~(c) All liability of this system with respect to members and retired persons under the contract shall cease and shall become the liability of the county system as of the date of termination specified in the agreement. Liability of the county retirement system shall be for payment of benefits in accordance with Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 applicable to it except that allowances of persons retired on the termination date and their beneficiaries and of beneficiaries of deceased members or retired persons who are receiving allowances on that date, shall be continued in at least the amount provided under the agency's contract as it was on that date. The termination may not affect the contribution rate of any member in any other employment under this system on the date of termination or any retirement allowance or other benefit based on service to another employer being paid on the termination date.~~

~~(d) Any member who becomes a member of a county retirement system upon the contract termination shall be subject to this part and Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 extending rights to a member or subjecting him or her to limitations because of membership in another retirement system to the same extent that he or she would have been had he or she been a member of the county retirement system during his or her membership in this system under the terminated contract.~~

~~(e) Upon execution of the agreement, a contracting agency that is an employer under Chapter 9 (commencing with Section 20790) shall cease to have that status, and the accumulated contributions of the contracting agency shall be determined and thereafter held as provided in Section 20834.~~

~~SEC. 2.—Section 20588 of the Government Code is amended to read:~~

~~20588.—(a) Notwithstanding any other provision of this article, the board may, pursuant to this section and Section 31657, enter into an agreement with the board of retirement of a county maintaining a county retirement system, for termination of participation of a public agency whose contract has been in effect for at least five years in this system or the state with respect to certain safety members who have ceased to be employed by the public agency or the state and have been employed by a county, fire authority, or district as a result of a transfer of firefighting or law~~

1 enforcement functions from the public agency or the state to the
2 county, fire authority, or district and inclusion of the former public
3 agency employees in that county retirement system.

4 (b) ~~The agreement shall contain provisions the board finds~~
5 ~~necessary to protect the interests of this system, including~~
6 ~~provisions for determination of the amount, time, and manner of~~
7 ~~transfer of cash or securities, or both, to be transferred to the~~
8 ~~county system representing the actuarial value of the interests in~~
9 ~~the retirement fund of the public agency or the state and the~~
10 ~~transferred employees by reason of accumulated contributions~~
11 ~~credited to that public agency or the state and the employees~~
12 ~~transferred. The agreement may also contain any other provisions~~
13 ~~that the board deems necessary to address issues related to the~~
14 ~~transfer, including, but not limited to, service credited under~~
15 ~~employers other than the contracting agency, benefits subject to a~~
16 ~~domestic relations order, and benefits subject to a lien. The~~
17 ~~agreement shall apply only to employees who are employed by the~~
18 ~~county or district on the effective date of the agreement.~~

19 (c) ~~All liability of this system with respect to the members~~
20 ~~transferred under that agreement shall cease and shall become the~~
21 ~~liability of the county retirement system as of the date of transfer~~
22 ~~specified in the agreement. Liability of the county retirement~~
23 ~~system shall be for payment of benefits to transferred employees~~
24 ~~in accordance with Chapter 3 (commencing with Section 31450)~~
25 ~~of Part 3 of Division 4 of Title 3.~~

26 (d) ~~Any member transferred who becomes a member of a~~
27 ~~county retirement system upon that transfer date shall be subject~~
28 ~~to provisions of this part and of Chapter 3 (commencing with~~
29 ~~Section 31450) of Part 3 of Division 4 of Title 3 extending rights~~
30 ~~to a member or subjecting him or her to limitations because of~~
31 ~~membership in another retirement system to the same extent that~~
32 ~~he or she would have been had he or she been a member of the~~
33 ~~county retirement system during his or her membership in this~~
34 ~~system.~~

35 (e) ~~This section shall apply only in Kern, Los Angeles, and~~
36 ~~Orange Counties.~~

37 SEC. 3. ~~Section 20590 of the Government Code is amended~~
38 ~~to read:~~

39 20590. (a) ~~Notwithstanding any other provision of this~~
40 ~~article, the board may enter into an agreement with the governing~~

1 body of a contracting agency, other than a housing authority, and
2 the governing body of a city with a population in excess of
3 2,000,000 and maintaining its own retirement system, for
4 termination of the contracting agency's participation in this system
5 and inclusion of the employees in the city retirement system.

6 (b) The agreement shall contain provisions the board finds
7 necessary to protect the interests of this system, including
8 provisions for determination of the amount, time, and manner of
9 transfer of cash or securities, or both, to be transferred to the city
10 system representing the value of the interests in the retirement fund
11 of the contracting agency and its employees by reason of
12 contributions and interest credited to the agency and its
13 employees. The agreement may also contain any other provisions
14 that the board deems necessary to address issues related to the
15 transfer, including, but not limited to, service credited under
16 employers other than the contracting agency, benefits subject to a
17 domestic relations order, and benefits subject to a lien.

18 (c) All liability of this system with respect to members and
19 retired persons under the contract shall cease and shall become the
20 liability of the city system as of the date of termination specified
21 in the agreement. Liability of the city system shall be for payment
22 of benefits to persons retired on the termination date and their
23 beneficiaries and of beneficiaries of deceased members in at least
24 the amount provided under the agency's contract as it was on that
25 date. The termination may not affect the contribution rate of any
26 member in any other employment under this system on the date of
27 termination or any retirement allowance or other benefit based on
28 service.

29 (d) Any member who becomes a member of a city system upon
30 the contract termination shall be subject to those provisions of this
31 part extending rights to a member or subjecting the member to
32 limitations because of membership in another retirement system
33 to the same extent that the member would have been had he or she
34 been a member of the city system during his or her membership in
35 this system under the terminated contract.